

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOHN JACOBSON,

Plaintiff,

Case Number: 10-13046

v.

HONORABLE AVERN COHN

JODY HAYES, REYNALDO PATINO, and  
DANNY CATHART,

Defendants.

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**ORDER ADOPTING REPORT AND RECOMMENDATION (DOC. 21)**  
**AND**  
**GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR**  
**SUMMARY JUDGMENT (Doc. 12)**

I.

This is a prisoner civil rights case under 42 U.S.C. § 1983 claiming violations of the Eighth Amendment. The matter has been referred to a magistrate judge for all pre-trial proceedings. Defendants filed a motion for summary judgment on the grounds that plaintiff's claims against them in their official capacities are barred by the Eleventh Amendment and plaintiff's claims against them in their individual capacities fail because they are entitled to qualified immunity. The magistrate judge issued a report and recommendation (MJRR) recommending that the motion be granted in part and denied in part. Specifically, the magistrate judge recommends that (1) plaintiff's claims against defendants in their official capacities be dismissed and (2) a ruling on plaintiff's claims against defendants in their individual capacities be deferred until plaintiff is afforded limited discovery. Neither party has objected to the MJRR and the time for filing

objections has passed.

II.

The failure to file objections to the report and recommendation waives any further right to appeal. Smith v. Detroit Federation of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir.1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motions. Thomas v. Arn, 474 U.S. 140, 149 (1985). However, the Court has reviewed the MJRR and agrees with the magistrate judge. Accordingly, the findings and conclusions of the magistrate judge are ADOPTED as the findings and conclusions of the Court. Defendants' motion for summary judgment is GRANTED IN PART AND DENIED IN PART.

SO ORDERED.

S/Avern Cohn  
AVERN COHN  
UNITED STATES DISTRICT JUDGE

Dated: February 28, 2011

I hereby certify that a copy of the foregoing document was mailed to John Jacobson, 430119, Earnest C. Brooks Correctional Facility, 2500 S. Sheridan Drive, Muskegon Heights, MI 49444 and the attorneys of record on this date, February 28, 2011, by electronic and/or ordinary mail.

S/Julie Owens  
Case Manager, (313) 234-5160